

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of : Robert G. Wilhelm, *et al.*  
Application No. : 09/876,915  
Filed : June 8, 2001  
Patent No. : 7,787,696  
Issue Date : August 31, 2010  
For : Systems and Methods for Adaptive Sampling and  
Estimating a Systematic Relationship Between a Plurality  
of Points  
Examiner : Gregory M. Desire  
Art Unit : 2624  
Atty. Docket : 2000-008-9/14

Mail Stop: Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Petition Regarding Patent Term Adjustment (PTA)**  
**Indicated in Issue Notification**

Sir:

1. An Issue Notification was mailed on August 31, 2010, for the present application. The Issue Notification indicated that this application is entitled to a Patent Term Adjustment (PTA) of 2519 days. Applicants believe that the correct total PTA is 2542 days.

2. The determination of the total PTA of 2519 days is erroneous because the U.S. Patent & Trademark Office's (PTO) PTA calculator accounted for 23 days of applicant delay for a "Miscellaneous Incoming Letter" which was submitted with the payment of the Issue Fee on February 26, 2010. Applicants believe that this delay is in error, because it overlaps with a delay of 97 days, under 37 CFR § 1.704(c)(10), for submission of an amendment under 37 CFR § 1.312. The number of PTA credits of 2945 days for PTO delay under 35 USC § 154(b)(1)(A) and 37 CFR § 1.702(a)(1) that is shown on the PTA History (Exhibit A) is correct. But the correct number of PTA debits

for Applicant delays is 403 days (276 + 97 + 30), and does not include 23 days of delay for the Miscellaneous Incoming Letter. Thus, the correct total PTA to date is 2542 days (i.e. 2945 days of PTA credit – 403 days of Applicant delay).

3. Thus, Applicant believes that the total PTA credit for PTO delay is 2945 days, the total PTA debit for applicant delay is 403 days, and the correct total PTA under 37 CFR § 1.703(f) is 2542 days.

4. This application for patent term adjustment is filed within two months of the Issue Date of the present application.

5. The following statements are required by 37 CFR § 1.705(b)(2)(i).

- i) The correct total PTA credit is 2945 days.
- ii) The basis for the 2322 days of PTA credit is under § 1.702(a)(1) and is due to the PTO's failure to mail a notification under 35 USC § 132 or a notice of allowance within 14 months of the application's filing date, and the PTO's failure to respond to a reply under 35 USC 132 no later than four months after the date on which the reply was filed. The basis for the 2275 days of PTA credit is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

- iii) The basis for the 403 days of PTA debit under § 1.704(b) is due to the Applicant's failure to reply to actions by the PTO within three months after the date on which the action was mailed, and the Applicant's failure to file a petition to withdraw the holding of abandonment within two months after the date on which the Notice of Abandonment was mailed.
- iv) The total PTA under § 1.703(f) is projected to be 2542 days, which is the total PTA credit for PTO delay of 2945 days less the PTA debit for applicant delay of 403 days.

6. The following statements are required by 37 CFR § 1.705(b)(2)(ii).

- i) The relevant dates as specified in 37 CFR § 1.703(a)(1) for one part of the PTA credit are as follows: the date of August 8, 2002, which is the date that is fourteen months after the date on which the application was filed under 35 USC § 111(a); and the date of July 2, 2004, which is the mailing date of a notification under 35 USC § 121. Thus, the period for this delay runs from August 8, 2002 to July 2, 2004. This period of delay is 694 days. The next relevant date is March 1, 2005, which is the date that is four months after the date on which the applicant filed a reply under 35 USC 132; and the date of June 10, 2009, which is the mailing date of a notification under 35 USC 132. Thus, the period for this delay runs from March 1, 2005 to June 10, 2009. This period of delay is 1562 days. The next relevant date is June 26, 2010, which is the date that is four months after the date on which the applicant paid the Issue Fee under 35 USC 151; and the date of August 31, 2010, which is the date on which this application issued as a patent. Thus the period of delay runs from June 26, 2010 through August 31, 2010. This period of delay is 66 days. Thus, the total period

for delay under 37 CFR § 1.703(a)(1) is 2322 days (i.e., 694 days + 1562 days + 66 days).

- ii) The relevant dates as specified in 37 CFR § 1.703(b) for the other part of the PTA credit are as follows: the date of June 9, 2004 which is the date one day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a); and August 31, 2010, which is the Issue Date of this application. This period of delay is 2275 days.
- iii) The two periods given in paragraphs 6(i) and 6(ii) overlap for the following periods. The period from June 9, 2004 until the date of July 2, 2004. This period of this overlap is 24 days. And the period from March 1, 2005, until the date of June 10, 2009. This period of overlap is 1562 days. And the period from June 26, 2010 through August 31, 2010. This period of overlap is 66 days. Thus, the total reduction for overlap is 1652 days (i.e., 24 days + 1562 days + 66 days).

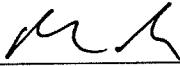
7. The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704.

- i) The Amendment and Response filed November 1, 2004 under 37 CFR § 1.111 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on July 2, 2004, and ends on the date the reply was filed. Thus, the period of delay runs from October 3, 2004 to November 1, 2004. This period of delay is 30 days.
- ii) The petition to withdraw the holding of abandonment filed on January 14, 2009, was filed after the two month period for requesting withdrawal of a holding of abandonment. Under § 1.704(b), the period of adjustment for delay associated with the petition begins on the day after the date that is two months after the date of mailing of the Notice of Abandonment and ending on the date a petition to withdraw the holding of abandonment was filed. Thus, this period of delay runs from April 14, 2008 and ends on January 14, 2009. This period of delay is 276 days.
- iii) The Amendment under 37 CFR § 1.312 filed on February 26, 2010, was filed after the Notice of Allowance. Under § 1.704(c)(10), the period of adjustment for delay associated with the petition begins on the date the amendment was filed and ends on the date that the Office issues a notice or response to the amendment. Thus, the period of delay runs from February 26, 2010 until June 2, 2010. This period of delay is 97 days.

8. Any patent granted on this application is not subject to a terminal disclaimer. See 37 CFR § 1.705(b)(2)(iii).

Respectfully submitted,

Date: 11/1/2010

  
Michael T. Morlock  
Reg. No. 62,245

Encl. - Exhibit A - Copy of PTA History for Application No. 09/876,915 Printed from  
PAIR November 1, 2010

# Exhibit A

11/1/2010

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Patent Term Adjustment																														
<table border="1" style="width: 100%; border-collapse: collapse; text-align: left;"> <tr> <td>Filing or 371(c) Date:</td> <td>06-08-2001</td> <td>Overlapping Days Between {A and B} or {A and C}:</td> <td>1652</td> </tr> <tr> <td>Issue Date of Patent:</td> <td>08-31-2010</td> <td>Non-Overlapping USPTO Delays:</td> <td>2945</td> </tr> <tr> <td>A Delays:</td> <td>2322</td> <td>PTO Manual Adjustments:</td> <td>-276</td> </tr> <tr> <td>B Delays:</td> <td>2275</td> <td>Applicant Delays:</td> <td>150</td> </tr> <tr> <td>C Delays:</td> <td>0</td> <td>Total PTA Adjustments:</td> <td>2519</td> </tr> </table>											Filing or 371(c) Date:	06-08-2001	Overlapping Days Between {A and B} or {A and C}:	1652	Issue Date of Patent:	08-31-2010	Non-Overlapping USPTO Delays:	2945	A Delays:	2322	PTO Manual Adjustments:	-276	B Delays:	2275	Applicant Delays:	150	C Delays:	0	Total PTA Adjustments:	2519
Filing or 371(c) Date:	06-08-2001	Overlapping Days Between {A and B} or {A and C}:	1652																											
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B Delays:	2275	Applicant Delays:	150																											
C Delays:	0	Total PTA Adjustments:	2519																											
<a href="#">Explanation Of Calculations</a> <span style="font-size: 2em; color: #0070C0;">i</span>																														
Number	Date	<b>Contents Description</b>			PTO(Days)	APPL(Days)	Start																							
68.5	08-31-2010	PTA 36 Months			2275	66	0																							
68	08-31-2010	Patent Issue Date Used in PTA Calculation																												
67	08-04-2010	Export to Final Data Capture																												
66	08-03-2010	Dispatch to FDC																												
65	07-26-2010	Mail-Petition Decision - Granted in Part																												
64	07-26-2010	Petition Decision - Granted in Part																												
63	07-23-2010	Adjustment of PTA Calculation by PTO																												
63	07-23-2010	Adjustment of PTA Calculation by PTO																												
62	06-02-2010	Mail Response to 312 Amendment (PTO-271)																												
61	06-01-2010	Response to Amendment under Rule 312																												
60	02-26-2010	Amendment after Notice of Allowance (Rule 312)					97	62																						
59	02-26-2010	Pubs Case Remand to TC																												
58	02-26-2010	Petition Entered																												
56	03-05-2010	Application Is Considered Ready for Issue																												
55	02-26-2010	Response to Reasons for Allowance																												
54	02-26-2010	Miscellaneous Incoming Letter					23	0																						
52	02-26-2010	Issue Fee Payment Verified																												
51	02-26-2010	Applicant Has Filed a Verified Statement of Small Entity Status in Compliance with 37 CFR 1.27																												
50	02-26-2010	Issue Fee Payment Received																												
49	01-08-2010	Finished Initial Data Capture																												
47	12-11-2009	Export to Initial Data Capture																												
45	12-01-2009	Mail Notice of Allowance																												
44	11-27-2009	Issue Revision Completed																												
43	11-24-2009	Examiner's Amendment Communication																												
42	11-24-2009	Allowed Case Returned to the Examiner for Clerical Processing																												
41	11-24-2009	Document Verification																												
40	11-24-2009	Notice of Allowance Data Verification Completed																												
39	11-23-2009	Notice of Allowability																												
38	09-28-2009	Information Disclosure Statement considered																												
37	09-28-2009	Information Disclosure Statement (IDS) Filed																												
36	09-23-2009	Date Forwarded to Examiner																												
35	09-10-2009	Response after Non-Final Action																												
34	06-10-2009	Mail Non-Final Rejection					1562	13																						
33	06-08-2009	Non-Final Rejection																												
32	06-05-2009	Examiner Interview Summary Record (PTOL - 413)																												
31	04-05-2009	Date Forwarded to Examiner																												
30	01-14-2009	Response after Non-Final Action																												
29	04-06-2009	Mail Notice of Rescinded Abandonment																												
28	04-05-2009	Notice of Rescinded Abandonment in TCs																												
27	02-06-2009	Mail-Petition Decision - Dismissed																												
26	02-06-2009	Petition Decision - Dismissed																												
25	01-14-2009	Petition Entered																												
24	02-06-2009	Mail-Petition to Revive Application - Granted																												
23	02-06-2009	Petition to Revive Application - Granted																												
22	01-14-2009	Petition Entered																												
21	02-13-2008	Mail Abandonment for Failure to Respond to Office Action																												
20	02-11-2008	Aband. for Failure to Respond to O. A.																												

## Exhibit A

11/1/2010

### United States Patent & Trademark Offi...

19	07-02-2004	Mail Non-Final Rejection	0
18	03-19-2007	Non-Final Rejection	0
17	03-21-2006	Case Docketed to Examiner in GAU	0
16	02-27-2006	IFW TSS Processing by Tech Center Complete	0
15	05-10-2005	Correspondence Address Change	0
14	02-10-2005	Date Forwarded to Examiner	0
13	11-01-2004	Response after Non-Final Action	30 9
12	11-01-2004	Request for Extension of Time - Granted	0
10	11-01-2004	Workflow incoming amendment IFW	0
9	07-02-2004	Mail Non-Final Rejection	694 -1
8	06-27-2004	Non-Final Rejection	0
7	05-27-2004	Case Docketed to Examiner in GAU	0
6	08-30-2001	Case Docketed to Examiner in GAU	0
5	08-20-2001	Transfer Inquiry	0
4	08-08-2001	Application Dispatched from OIPE	0
3	08-07-2001	Correspondence Address Change	0
2	06-18-2001	IFW Scan & PACR Auto Security Review	0
1	06-08-2001	Initial Exam Team nn	0

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